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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,564	04/19/2004	Richard Thiele JR.	THL-10002/29	3187

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EXAMINER

OKEZIE, ESTHER O

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/827,564	Applicant(s) THIELE, RICHARD	
	Examiner Esther O. Okezie	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

The amendment filed on 3/29/06 and the remarks presented therewith have been carefully considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skerker et al. US 5,014,434 in view of Montesi US 3,877,143.
2. Re claim 1, Skerker discloses a kitchen tool including an elongated handle (4), a scoop portion (14) having a width, a length, and a leading edge (8); an a plurality of concave scallops (20) on the leading edge; and each scallop defining a segment of a single circle; wherein the segments intersect at distinct forward points in a straight line (Fig 1). Skerker discloses a kitchen tool with a beveled working end (8) having a blade type edge around most of the tool. On the third side (18) are serrations (20) in the form of scallops. Skerker does not disclose these scallops furtherest away from the handle and generally perpendicular to the handle. Montesi discloses a pastry tool with a blade edge all around most of the tool, the blade edge including serrations (30) or notches.

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"The peripheral edge 26 is beveled all around in knife like fashion 28. Furthermore, such edge is notched as at 30 to provide for improved cutting characteristics. The notches 30 are equally spaced along the beveled knife edge 28" (col. 2, lines 21-25). It would have been obvious to one of ordinary skill at the time of the invention to modify the tool of Skerker et al to include "... a serrated type edge all around [the tool's] peripheral edge" as taught by Montesi in order to facilitate the use of the edge in cutting at differing orientations and "... to enhance complete and effective removal" of products being sliced or lifted (Montesi: col. 1, lines 34-45).

1. Re claim 2, Skerker et al. does not disclose the dimensions of the shovel, but between 3-12 scallops are disclosed. It would have been obvious to one of ordinary skill in the art at the time of the invention to design the tool dimensions based on the application of the tool.

3. Re claim 3-5, Skerker et al discloses the points are spaced apart by a distance that is substantially greater than the radius of the scallop.

4. Re claim 6, the scallops are substantially identical.

5. Re claims 7,9,10, Skerker discloses the tool is configured for general domestic use and can be operably used for snow shoveling, ice scraping, and gardening.

6. Re claim 8, Skerker discloses stiffening ribs (see fig 1 above line 16).

7. Re claim 11, the leading edge (work edge 8) is attached to the scoop portion (fig 1).

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2. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Skerker et al. in view of Guo. Skerker et al does not disclose the leading edge and the scoop portion constructed of dissimilar materials. Guo discloses a tool wherein the leading edge is constructed from steel and the scoop portion is constructed from aluminum or plastic. It would have been obvious to one of ordinary skill in the art to modify the tool of Skerker et al to include a leading edge made of a dissimilar material then the scoop portion because the leading edge undergoes different stresses then the scoop portion, therefore materials of differing stress capacity should be used for greater tool longevity.

Response to Arguments

Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection as described above.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (571) 272-8108. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

6/11/06


EILEEN D. LILLIS
SUPERVISORY PATENT EXAMINER
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